SUPREME COURT, U. S.

No. 89

FILED
APR 15 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

GLORIA STOLLAR,

Petitioner,

vs.

RICHARD B. OGILVIE, Sheriff of Cook County, Illinois,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois.

PETITION FOR WRIT OF CERTIORARI

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UNITED STATES LAW PRINTING CO., CHICAGO 12, ILL. LA review 5-6561

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GLORIA STOLLAR, Petitioner herein, prays that a wirt of certiorari issue to review the judgment of the Supreme Court of Illinois entered in the above entitled cause on November 14, 1966.

OPINION BELOW

The opinion of the Supreme Court of Illinois is reported at 36 Ill.2d 261, 222 N.E.2d 496 and is printed in Appendix A hereto, *infra*, App. p. 1

JURISDICTION

The judgment of the Supreme Court of Illinois was entered on November 14, 1966. A timely petition for rehearing was denied on January 17, 1967. The jurisdiction of this court is invoked under Title 28, U.S.C., §1257(3).

QUESTIONS PRESENTED

1. Whether the Sixth Amendment right to trial by jury is applicable to the States through the Fourteenth Amendment and if so, does the Sixth Amendment right to trial by jury apply to cases of contempt of court.

2. Whether the denial of the right to trial by jury to one charged with contempt of court for conduct which also is a felony under the applicable State's statutes, constitutes a denial of the equal protection of the laws contrary to the Fourteenth Amendment of the Constitution of the United States where the contemnor would have been entitled to a jury trial had the State chosen to proceed by way of indictment for the felony rather than citation for contempt.

STATEMENT OF THE CASE

The petitioner was convicted of contempt of court by the Probate Court of Cook County and sentenced to imprisonment in the Cook County Jail for a term of eighteen months. Petitioner was the guardian of the estate of petitioner's daughter and the alleged contemptuous con-

duct was the conversion of monies of said estate and the filing of false inventories and accounts. The facts are essentially contained in the opinion of the Supreme Court of Illinois which affirmed the contempt conviction and which is reported at 31 Ill.2d 154, 201 N.E. 2d 97 and which is appended hereto as Appendix B. This court denied certiorari, 380 U.S. 912, 85 S.Ct. 898, 13 L.Ed.2d 798. Thereafter, petitioner filed a petition for a writ of habeas corpus in the Circuit Court of Cook County alleging in essence that the Sixth Amendment right to trial by jury is applicable to the States and that under the dictum of *United States* v. *Barnett,* 376 U.S. 681, 84 S.Ct. 984, 12 L.Ed.2d 23, so much of her sentence as exceeded six months was void.

The Respondent Sheriff filed a motion to dismiss which was granted. The complete proceedings in the trial court which consists of the petition for habeas corpus, the motion to dismiss and the order of dismissal were reproduced at pages 4, 5, 5 and 7 of the Appellant's brief in the Supreme Court of Illinois in lieu of an Abstract of Record and are appended hereto as Appendix C.

An appeal from the order of dismissal was taken to the Supreme Court of Illinois which court affirmed the judgment of dismissal in a judgment order which is appended hereto as Appendix D. Although the constitutional questions involved herein were presented to the Supreme Court of Illinois in the briefs and petition for rehearing, that court ignored them and based its decision upon the case of *People* v. *Bloom,* 35 Ill. 2d 255, 220 N.E.2d 475, which case is now pending before this court on petition for certiorari as Case No. 1070, October Term, 1966.

REASONS FOR GRANTING WRIT

1. This case presents first the questions of whether the Sixth Amendment right to trial by jury is applicable to the States and if so, is it applicable to cases of criminal contempt.

The provisions of the Sixth Amendment concerning right to counsel were made applicable to the States in *Gideon* v. *Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799. The confrontation clause of that amendment was made applicable to the States in *Pointer* v. *Texas,* 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923, and *Douglas* v. *Alabama,* 380 U.S. 415, 85 S.Ct. 1074, 13 L.Ed.2d 934. In *Klopfer* v. *North Carolina* ..... U.S. ....., 87 S.Ct. 988, ... L.Ed.2d ....., the right to speedy trial secured by the Sixth Amendment was made applicable to the States through the Fourteenth Amendment.

The reasoning behind each of those cases is that the provision of the Sixth Amendment therein considered is a fundamental right essential to a fair trial. That trial by jury is also an essential of a fair trial can no longer be doubted. By long established usage in the courts of the United States and the various states, the right of trial by jury has become so fundamental as to constitute an essential attribute of a fair and impartial trial.

Klopfer is most applicable here for the speedy trial provision of the Sixth Amendment cannot be divorced from the jury trial provision. The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed * * *.

It must be noted that the Sixth Amendment provision considered in Klopfer gives an accused not the right to a speedy trial but a speedy, public *jury* trial. No other construction is possible which does not strain the plain meaning of the words of our constitution.

Having determined that the Sixth Amendment right to trial by jury is applicable to the State, we must now turn to the question of whether it is applicable to the cases of criminal contempt. This being a petition for a writ of certiorari, we deem it unnecessary to go into the extended arguments on the merits of this question of which this court has been made well aware in the cases of *United States* v. *Barnett,* 376 U.S. 681, 84 S.Ct. 984, 12 L.Ed.2d 23; *Cheff* v. *Schnackenburg,* 384 U.S. 373, 86 S.Ct. 1523 16 L.Ed.2d 629 and *Shillitani* v. *United States,* 384 U.S. 364, 86 S.Ct. 1531, 16 L.Ed.2d 622. Nor do we deem it necessary to convince the court of the importance of the question for again we may assume from the opinions in the above cited cases that the court is cognizant of the significance of the problem. We need only add that as may be seen from this case and the *Bloom* case, unless action is taken by this court to prevent the prosecution of crime as criminal contempt or at least to prevent the lengthy sentences imposed, the States, wherever possible, will resort to contempt proceedings in order to assure speedy convictions unfettered by the need for convincing twelve citizens of the community of the guilt of the accused.

2. As significant as the questions above posed are, and as convinced of the rightness of our position as we are, there is nevertheless, a third way which we submit to this court.

This is the way of equal protection under the Fourteenth Amendment.

The conduct of the petitioner complained of could have been prosecuted as embezzlement, larceny by bailee, fraud or perjury under the then existing criminal laws of the State of Illinois. Nevertheless, rather than proceeding by way of indictment upon which the petitioner would have been able to assert her rights as an accused, the State chose to proceed by way of an action for contempt under which a sentence longer than the minimum for any of the felonies was imposed and in which the most important right of trial by jury was to her denied.

Such invidious discrimination against the petitioner cannot be allowed. "Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime must so far as the law is concerned, 'stand on an equality before the bar of justice in every court.' *Chambers* v. *Florida,* 309 U.S. 227, 241, 60 S.Ct. 472, 479, 84 L.Ed. 716." *Griffin* v. *Illinois,* 351 U.S. 12, 17, 76 S.Ct. 585, 590, 100 L.Ed. 891. Because of the failure of the courts of Illinois to permit the petitioner to stand on an equality with all other persons charged with a serious offense, she was denied the equal protection of the laws and her conviction is void.

CONCLUSION.

For the above and foregoing reasons, a writ of certiorari ought to issue to review the judgment of the Supreme Court of Illinois in this case.

Respectfully submitted,

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